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PROBLEMS OF SOCIAL UNREST—IV—THE FUTURE OF LABOR UNIONISM.

At no time has labor unionism exercised the power it does today. After years of struggle it has reached a position where it virtually controls the labor market of the country. To reach this position of preeminence and power the leaders of organized labor have, in the main, wisely guided and restrained their following, and in return have received the support of public opinion. The support of the people has enabled the cause of labor to triumph over many apparently insurmountable obstacles. The overbearing capitalist, the slave-driving employer and the "public-be-damned" railroad baron have been driven from positions of influence and authority by the force of public sentiment supporting the demands of union labor.

And public sympathy is still on the side of labor and will continue on that side unless and until the affections of the people are alienated by some unreasonable demand of union leaders or the disloyalty of those who seek to impress their demands upon the people by methods which set at defiance the laws of the land and the authority of those elected to enforce them.

The labor unions have established certain rights in favor of the worker that did not exist at common law: the right to strike or quit an employment by agreement; the right to organize; the right to collectively bargain for their labor. It is too late to question these rights. The labor union is a recognized institution of modern industrial society, and the recognition of the three rights mentioned are beyond question and recent decisions of the courts amply support the popular verdict.

It is a mistake for business men to contend that workers must be compelled to contract for their labor as individuals while capital is free to unite a hundred factories into one organization and bargain with its employes as a unit. On the other hand, it is absurd for labor unions to continue to insist on the right to organize the employes of a business against the will of the employes themselves. The labor union has yet no accepted right to call a strike of the employes of an open shop and by intimidation strive to compel the employes to join their union. Much less have the representatives of a labor union any right to approach the management of a non-union factory and assume to speak for its employes from whom they have received no authority to act. These propositions ought to be self-evident to all those who stand for fair play and individual liberty.

The principle of collective bargaining simply means that the workers of a certain factory have a right to bargain for the sale of their labor as a unit and to commission anyone they wish to represent them in such a transaction. Nor is it unreasonable that these negotiations should be carried on by the representatives of the local unions of the employes so elected.

The important principle, however, which must be accepted if the right of collective bargaining is to be recognized is that all contracts made in behalf of the workers shall be inviolable after they are entered into. If they can be broken by the workers at will such contracts are utterly worthless and the entire labor union movement will be discredited. The leaders of unionism have made praiseworthy efforts to force their men to live up to their agreements, even going so far as to revoke the charters of local unions who authorize a strike in violation of the terms or an agreement with employers. But even in the face of such universal condemnation, many union men do not hesitate to violate their agreements.

One of the principal causes of the present unrest is the struggle of disloyal radicals to control organized labor. This is a fight

within the ranks of labor, and neither the public nor the employers can afford to take an indifferent attitude toward the outcome. That business man is greatly deluded who imagines that the defeat of the present union leadership would remove what he regards as a great obstacle to his success. A power, infinitely worse, would rise in its place which, even if it existed only for a time and were ultimately defeated, as it would be, would work infinite harm, not only to business itself but to the feeling of mutual respect and accommodation between employers and employes which has begun to grow in recent years in many places.

But there are at least three real dangers in trade unionism: first, the sympathetic strike; second, the restriction of apprentices; and third, the antagonistic attitude of the unions to industry. The sympathetic strike is absolutely unjustifiable. It is unfair to the public. It is unfair also to those employers who have dealt honestly with their employes. To penalize a "fair" employer in order to coerce some other employer to meet the demands of the workers destroys the public confidence in the union and discourages every honest employer in his efforts to arrive at an understanding with the union upon which he can continue his business without interruption.

The restriction of the number of those who shall enter a trade is wholly indefensible. It is undemocratic. There must be no denial of the right of any American citizen to follow any calling for which he can properly qualify himself. Lord Finlay, in his address to the American Bar Association at Boston in September, 1919, gave expression to this striking thought: "When slavery was abolished," he said, "it was said that no man could thereafter be compelled to work. I think it lies with us to see to it that, in the future, no man is compelled against his will not to work."

But the chief fault of labor unionism at the present hour is its antagonistic attitude towards business. The union leaders too frequently look upon all business men as their enemies and all business enterprises as the strongholds of the enemy, to be attacked and torn down at every possible opportunity. This spirit of enmity between employe and employer must give place to one of united trust and confidence; otherwise, the nation's industries will become seriously impaired and the workers themselves will be the first to feel the pinch of the necessary contraction that will follow.

As a result of the growing recognition of the mutual dependence of employer and employe on each other and on the success of the particular industry in which they are both engaged, many business men and workers are supporting a plan for the organization in each shop and factory of all the workers in the particular factory. This known as shop committees, and is not in organization, although functioning through what are known as shop committees, is not in any sense dependent upon or controlled by the factory management; it is an absolutely independent organization of the employes of the particular factory. No objection is made to these groups affiliating with other labor organizations, but the main advantage over the present situation is that all contracts for remuneration of workers, all agreements respecting the conditions under which the workers shall labor, are made with the shop committee of the particular factory and not with persons who are strangers to the employer and have no interest in the business which is sought to be affected.

This new tendency is well illustrated by the action of the War Labor Board in dealing with the strike of munition workers during the war. The Board desired to deal with the workers through the union leaders, but they soon discovered that the union representatives were, in most cases, not munition workers themselves, were not familiar with the needs of the business nor with the effect of the conditions which they sought arbitrarily to impose. The Board thereupon refused further to deal with the union leaders but requested the workers in the various plants to organize "Depart-

mental Committees" to deal with the government. The "Committees" elected by the factory workers themselves were so fully informed of the actual condition, not only of the workers but of the plants in which they worked, that it was an easy matter for the government to reach a fair and satisfactory agreement with them. The Board requested the committees to continue in existence and to advise the management as to any improvements in working conditions that may be desired, and to act as a court of appeal in all labor disputes. The plan worked well, and although the national union leaders protested, the workers themselves were well satisfied.

The need of the labor union is for more "home rule." The tendency has been to permit state and national organizations to assume the right to speak for the local organizations and to deny local organizations or factory groups the right to make their own agreements. The result is a national dictatorship over labor that is as dangerous to the workers themselves as it is to industry and to the public. This centralization of power gives the opportunity for radicals, anarchists, I. W. W. propagandists, to seize the place of power, not to improve the condition of the workers but to wreck the business of the country in order to create a revolution that will give them control of the government. These professional reformers are not workers, but politicians. They are not interested in industry, but desire only political power, which they hope to attain by wielding a power over industry, and therefore over the life of the people, that will compel the government to accede to their political demands. This tendency of the labor movement must be resisted by every loyal citizen, whether he be an employe or employer. And the most effective means by which to resist this tendency is to confide more of the power over labor conditions and contracts now vested in national union leaders to local factory organizations, or at least to local group organizations which have an interest in the success of the industry with which they are connected.

Agreements between employers and employes should not be regarded as treaties between hostile forces, but as bases of mutual understanding between those interested in the same thing—the promotion of the industry from which all derive their support. This the Shop Committee makes possible. It is the vital link between the national and state unions and the particular industry affected, and should be the means of a better understanding of each other on the part of the employer and the worker.

NOTES OF IMPORTANT DECISIONS.

EFFECT OF INTERVENING WRONGFUL ACT AS EXCUSING THE DEFENDANT'S NEGLIGENCE.—There has always been a controversy as to when the intervening wrongful act or negligence of a third person shall excuse the negligence of the defendant. The question has recently been presented in an interesting form to the Supreme Court of California in the recent case of Hale v. Pacific Tel. & Tel. Co., 183 Pac. 280.

In this case the defendant left unguarded a box of dynamite caps on a shelf on exposed porch of an unoccupied cottage. A small boy, eight years old, living next door, saw the box, pried open the lid and took therefrom about twenty dynamite caps. Thinking they could be used in a toy pistol he gave one to the plaintiff, a boy seven years old, who put one in his pistol, causing it to explode, injuring himself severely and permanently.

In reversing the trial court's judgment in favor of the plaintiff the Supreme Court declared that the negligence of the defendant was not the proximate cause of the injury because of the wrongful act of a boy eight years old. On this point the court said:

"Conceding that defendant was culpably guilty in the care of the dynamite, such want of care was not the direct and immediate cause of plaintiff's injury, since, notwithstanding defendant's negligence, the accident would not have occurred except for the intermediate wrongful acts of Walter Hadley in unlawfully breaking open and taking the caps from the wooden box in which they were deposited and giving them to plaintiff. Upon the admitted facts, was defendant's negligence the prox-

imate cause of plaintiff's injury, or must it be attributed to the intervening, unlawful act of a responsible third person? The rule, as we understand it, applicable to such cases is that where the original negligence of a defendant is followed by an independent act of a third person, which results in a direct injury to a plaintiff, the negligence of such defendant may nevertheless constitute the proximate cause thereof if, in the ordinary and natural course of events, the defendant should have known the intervening act was likely to happen, but if the intervening act constituting the immediate cause of the injury was one which it was not incumbent upon the defendant to have anticipated as reasonably likely to happen, then, since the chain of causation is broken, he owes no duty to the plaintiff to anticipate such further acts, and the original negligence cannot be said to be the approximate cause of the final injury. Thus, if A negligently leaves his horse attached to a buggy unhitched in the street, and, due to the wrongful act of B in frightening the horse, it runs away, causing injury to another by collision, A is liable to the person so injured, for the reason that he, as a reasonably prudent man, should have foreseen that the horse might be frightened, as a result of which it, in accordance with the instinctive nature of such animals, would run away and cause damage. But, on the other hand, if B steals the unhitched horse, and, in escaping with it, collides with another, to the latter's damage, no recovery therefor can be had against A, for the reason that the wrongful theft of the horse was not a consequence which A, as a reasonably prudent man, should be deemed to have anticipated as a result of leaving his horse in the street unhitched. So, in the instant case, notwithstanding the alleged negligence of defendant, no injury in consequence thereof would have resulted to plaintiff, except for the act of Walter Hadley, who testifies that he knew that it was both morally and legally wrong to take the caps from the box. He had never before been stolen from the yard, the porch of pears, nothing had ever prior to the time been stolen from the yard, the porch or the house, in which defendant stored various kinds of supplies and kept a quantity of material used in its construction work. The facts disclose no element of allurement whereby Hadley was attracted to the porch or induced to break open the box. It cannot under the circumstances be said that defendant was bound to anticipate the act committed and guard against consequences which might follow in case one who, as here, admittedly knew the wrongful nature of his acts, should steal the caps and use them in a manner which would cause injury to another."

It seems to us rather extravagant to claim that the act of a boy eight years old in taking dynamite caps from a box negligently exposed to view is a culpable act on a par with the act of a thief in running away with a horse and buggy and, while doing so, injuring some person. The negligence of the defendant was in leaving exposed a box of dynamite caps and they might readily be presumed to have had in mind the possibility that children might take them to play with.

WHETHER ALIMONY CAN BE ALLOWED IN SUITS TO ANNUL MARRIAGE.—The Court of Appeals of New York has passed upon a novel situation in respect to suits for annulling marriage and the right of the alleged wife to alimony pendente lite. William B. Farnham et al. v. Cora M. Farnham, decided October 21, 1919, not yet reported.

In the present case it appeared that in 1905 William H. Farnham died, leaving surviving him as his only heir, a son, Louis S. Farnham. In his will he provided that income from his property should go to his son for life, and after the son's death the property should be divided among the testator's heirs at law. Louis S. Farnham married the defendant in Kansas City, Kan.; he died June 5, 1917, leaving a son.

Suit to annul the marriage was brought by the sisters of Louis S. Farnham. The defendant asked for alimony pendente lite, and the court granted her an allowance of $100 per month and $750 counsel fees. In setting aside this order the Court of Appeals said:

"I am of the opinion the orders appealed from should be reversed and the motion for alimony and counsel fee denied. There is no authority, so far as I am aware, justifying the making of such allowance, nor do I believe the court had power to make it. Alimony and counsel fee can only be allowed when the relation of husband and wife exists. The defendant has no husband. He died in June, 1917, and after his death the court had no power to make an order allowing alimony and counsel fee in an action to annul the marriage. If the marriage were a valid one, then the statute defines what interest the widow takes in the husband's estate, and that interest is substituted for and takes the place of the obligation resting upon him, prior to his death, to support her. The obligation to support and maintain is the underlying principle which justifies the granting of alimony and counsel fee when the marriage relation is attacked. The plaintiffs, however, stand in no such position to the defendant. They are strangers to her. The statute clothes them with authority, as interested parties, to maintain an action to test the validity of the marriage, and they are under no more obligation to furnish her with means to defend the action than they are to support her. She is not a privileged suitor against them, but only against her husband while he lived."

Heretofore it has been the practice in some jurisdictions to allow alimony pendente lite in suits in nullity where the husband brings the proceeding. Thus, in Higgins v. Sharp, 164 N. Y. 4, it was held that where the husband attacks the validity of the marriage and seeks to have it annulled there is implied power in the court to award the wife during the pen-

dency of the action sufficient funds from his estate to pay her living expenses and counsel fees to enable her to defend the action; but there are many cases which hold that where the wife brings action to have the marriage annulled that there is no power in the court to award alimony or counsel fees. The principle underlying these decisions is that the wife, by her petition, admits that the marriage is void and that she therefore is not the wife of defendant; and that the wife, having elected to rescind the contract of marriage, can claim nothing under it. On this point the court said:

"The action, as indicated, is to annul a marriage. The wife is defendant, but the adverse party is not her husband, and the estate out of which she asks for the allowance is not that of her husband. The property never belonged to him. His only interest therein was the right to the income therefrom. The title is in the trustee appointed by the will of William H. Farnham. If the plaintiffs succeed in the action the property will belong to them, and if they fail, then the property will belong to the infant son of her deceased husband. Upon what possible theory can the property of a third party be summarily taken from him and given to another? Is the title to property so insecurely protected? I do not think so."

UNIFORM LEGISLATION—NEGOTIABLE INSTRUMENTS ACT.[1]

"Conformity" or uniformity in religion, and the efforts to establish and enforce it, worked many hardships and led to open rebellions in England in the seventeenth and eighteenth centuries. The narrow and tyrannical "Clarendon Code" of 1660 inevitably involved that notable earl in all its ill consequences, and its pernicious effects may be said to be one of the main causes which led to the peopling of the New World with such a sturdy race of Puritans and Covenanters—who met with an almost equal intolerance from the established governments of the various colonies on this side of the Atlantic, and were forced on into the wilderness of the borderland, where their trusty rifles furnished an ever-secure barrier against the savage hordes' murderous incursions into the infant settlements of the provinces, in exchange for the privilege of worshipping God according to the dictates of conscience. The great Cromwell, as Protector, strove in vain to establish constitutional government and religious liberty in England.

But there is a wide distinction between uniformity in religion and uniformity in law. The first is neither desirable nor practical; the latter is both desirable and feasible between and among the states of the Union. As the various states became knit into closer communion and unity through business, commerce, and mercantile dealings and relations, there became manifest the great desirability for a uniformity in the legislation of the various states upon mercantile matters.

During the last years of 1800 the scheme of making uniform, in the various states of the Union, the mercantile and other laws, advocated and championed by the American Bar Association, was inaugurated, with the result that we now have uniform laws upon the statute books of the various states—an "entering wedge" as to some of the topics or subjects of the law, and practically complete in all the states as to yet other subjects—covering the following fourteen topics or subjects of the law: Uniform Act for the Extradition of Persons of Unsound Mind;[2] Uniform Annulment of Marriage and Divorce Act;[3] Uniform Bills of Lading Act;[4] Uniform Cold Storage Act;[5] Uniform Desertion and Non-Support Act;[6] Uniform Land Registration Act;[7] Uniform Marriage Evasion Act;[8] Uniform Negotia-

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(2) Adopted in Nevada and Tennessee.

(3 Adopted in Delaware, New Jersey and Wisconsin.

(4 Adopted in Alaska, California, Connecticut, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New York, Ohio, Pennsylvania, Vermont, Washington and Wisconsin.

(5) Adopted in Maryland and Utah.

(6) Adopted in Delaware, Hawaii, Kansas, Massachusetts, North Dakota, Texas, Vermont and Wisconsin.

(7) Adopted in South Carolina, Utah and Virginia.

(8) Adopted in Illinois, Louisiana, Massachusetts and Vermont.

ble Instruments Act;[9] Uniform Partnership Act;[10] Uniform Probate of Foreign Wills Act;[11] Uniform Sales Act;[12] Uniform Stock Transfer Act;[13] Uniform Warehouse Receipts Act;[14] and Uniform Workmen's Compensation Act.[15]

The Bench and Bar do not appear to take much more kindly, in the actual practice and the trial and decision of causes, to these uniform laws than the English of the seventeenth and eighteenth centuries took to uniform religion. We are warranted in asserting it to be a fact that the great mass of the lawyers at the bar and of the judges on the bench are not aware of the existence of these uniform laws, or their importance is not appreciated by them, because of the fact that in the trial and decision of practically a thousand causes arising under these statutes during the course of the last year, in about one third of the causes only was attention called to the existence of the statute applicable, either by the attorneys who tried the causes or the judges who wrote the opinions.

It is not the purpose of this article to point out and discuss the good points and qualities of any or all of these Uniform Acts, or to discourse upon the manifest advantages of most of them; each merits, and would require, an entire article to measurably do this in an adequate manner. The Uniform Negotiable Instrument Act, having now become universal in the states and territories of the Union, with the exception of the states of Georgia and Texas, merits special attention, not only in leading law periodicals, but also careful consideration by the Bench and Bar; and it is to be hoped that the Bar will give the act that thoughtful attention which it deserves, and that the Bench will measure by its provisions all causes falling within its limits. It is greatly to be hoped, and I believe that we may fairly and reasonably expect, that there will be a serious effort on the part of the judges administering the act in the various courts in the different jurisdictions to give to each and all of the provisions of the Act a uniform construction and interpretation, and that the efforts and conscientious labors of the committee early appointed for the purpose of promoting and securing such construction and interpretation shall not have been in vain. To secure the best results from such uniform legislation—the results the American Bar Association hoped for and sought to attain—it is not only highly desirable, but it is absolutely essential, that there shall be consistency and uniformity in the construction and interpretation of each clause and provision of the Act. One thing that will make the accomplishment of this highly-desirable end difficult to attain, in some instances, is the fact that some of the state legislatures have sought to "improve" upon the Act as presented to them, and there are certain lamentable verbal changes in some instances

(9) Adopted in all the states and territories of the Union, except Georgia and Texas, as follows: Alabama, 1907; Alaska, 1913; Arizona, 1913; Arkansas, 1913; California, 1917; Colorado, 1897; Connecticut, 1897; Delaware, 1911; District of Columbia, 1899; Florida, 1897; Hawaii, 1907; Idaho, 1903; Illinois, 1907; Indiana, 1913; Iowa, 1902; Kansas, 1905; Kentucky, 1904; Louisiana, 1904; Maine, 1917; Maryland, 1898; Massachusetts, 1898; Michigan, 1905; Minnesota, 1913; Mississippi, 1916; Missouri, 1905; Montana, 1903; Nebraska, 1905; Nevada, 1907; New Hampshire, 1909; New Jersey, 1902; New Mexico, 1907; New York, 1897; North Carolina, 1899; North Dakota, 1899; Ohio, 1902; Oklahoma, 1909; Oregon, 1899; Pennsylvania, 1901; Rhode Island, 1899; South Carolina, 1914; South Dakota, 1913; Tennessee, 1899; Utah, 1899; Vermont, 1912; Virginia, 1898; Washington, 1899; West Virginia, 1907; Wisconsin, 1899; Wyoming, 1905.

(10) Adopted in Alaska, Maryland, Michigan, Pennsylvania, Tennessee, Wisconsin and Wyoming.

(11) Adopted in Alaska, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Nevada, Washington and Wisconsin.

(12) Adopted in Alaska, Arizona, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Utah, Wisconsin and Wyoming.

(13) Adopted in Alaska, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee and Wisconsin.

(14) Adopted in all the states and territories of the Union except Arizona, Arkansas, Florida, Georgia, Hawaii, Indiana, Kentucky, Mississippi, New Hampshire, North Dakota, Oklahoma, South Carolina and Texas.

(15) Adopted in Idaho and North Dakota.

—not important in the general scheme and effect of the Act to be sure, but liable to be the source of a want of harmony in construction and application. This variation in some of the states is thought to have been in no instance desirable or necessary, and if it should result in a conflict of the construction and interpretation in the various courts in the different jurisdictions it may have an effect upon the construction and interpretation the federal courts will be required to give to the Uniform Negotiable Instrument Act; if the construction of the Act is uniform in the various states, this construction and interpretation, it is thought, will be binding upon all federal courts, under the provisions of the Federal Judiciary Act[16] and the decisions.[17]

I am not unmindful of the rule laid down by Mr. Justice Story in an early case,[18] which rule has ever since been followed,[19] to the effect that the provision of the Judiciary Act is limited in its application to laws strictly local, and construction thereof adopted by local tribunals, and to rights and title to things having a permanent locality; but that it does not extend to contracts and other instruments of a commercial nature, on the ground that such contracts and instruments are not construed and interpreted by the local courts under any local statute, or positive and fixed or ancient local usage, but by the general principles of commercial law—and the principles and rules of commercial law, we shall see presently, are not local to any state or government, but common to all nations, alike. However, it is thought that since the codification of the commercial law—in its main features, at least—and the adoption of that codification by practically all the states and territories of the Union, Mr. Justice Story's rule will be no longer applicable, because (1) each state has a local statute under and in accordance with which the construction and interpretation is made, and such construction and interpretation, for that reason, will be binding upon the federal courts, under the provision of the section of the Judiciary Act cited; and (2) because the law, being uniform throughout the whole Union, there can be, or at least there should be, but one rule of construction and interpretation as to all matters arising under the codification known as the Uniform Negotiable Instrument Act, and this rule of construction and interpretation will be binding, alike, upon state and federal courts. In cases not covered by the codification, or in cases of doubt, the state and federal courts may have recourse to the commercial laws and decisions of foreign countries, to ascertain in what manner those nations dispose of such questions.

The commercial law is founded upon the customs and usages of merchants and tradesmen[20] of the nation, and of the world, in their dealings with one another; not upon any statutory provisions or regulations, *in initio*. It is also true that all the laws in other departments of English jurisprudence are also founded, *in initio*, upon customs and usages, and this is also true even in those countries in which the Civil Law is regarded as the basis of the jurisprudence;[21] but in the case of commercial law those customs and usages are determined and declared by the merchants and traders themselves in the first place, the courts merely enforcing them when

(16) § 721, 5 Fed. Stats. Ann., 2nd ed., p. 1123.

(17) See collection of cases, 5 Fed. Stats. Ann., 2nd ed., pp. 1157 (par. 5), 1168 (par. 10).

(18) Swift v. Tyson, 41 U. S. (16 Pet.) 1, 18, 10 L. ed. 865, 871.

(19) See cases cited in 3 Rose's Notes on U. S. Reps., p. 634.

(20) A merchant was originally one who carried on a trade with a foreign country; one who exported or imported goods and sold them at wholesale; sometimes designated as a shipping-merchant.—Beawes' Lex Mercatoria, p. 23. See Bacon's Abridgement, tit "Merchant;" Comyn's Dig. tit "Merchant" (A). The word was later extended to, and now includes all whose business it is to buy and sell merchandise, or who habitually trade in merchandise; a trafficker, a trader.—City of London v. Wilks, 2 Salk. 445, 91 Eng. Rep. 386; Thomson v. Hopper, 1 Watts & S. (Pa.) 467, 469; Carter v. Diemer, 4 Co. Ct. Rep. (Pa.) 375, 378. See, also, Words and Phrases, 1st and 2nd series, tit "Merchant."

(21) See M. Brissaud's account of the Roman Law and Regional Customs, in Part III of Vol. 1, Continental Legal History Series.

thus ascertained and declared by the merchants and traders, while in the other fields of jurisprudence it is the function of the courts and judges both to ascertain and declare, as well as enforce, the custom and usage giving the right declared upon.

Mr. Justice Story has well said[22] that "the law respecting negotiable instruments may be truly declared, in the language of Cicero, adopted by Lord Mansfield in Luke v. Lyde,[23] to be in a great measure, not the law of a single country only, but of the commercial world. *Non erit lex alia Romae, alia Athensis, alia nunc, alia post hac, sed et apud omnes gentes, et omni tempore, una eademque lex obtinebit.*"[24] It is true that there are, as Lord Blackburn pointed out in a Scotch appeal involving a check, in some cases differences and peculiarities which, by the municipal law of each country, are grafted on it; but that the general rules of the law merchant are the same in all countries.[25] In English courts the judges cite, not only their own law-cases, but also those of Scotland and America, Pothier and the French "Code de Commerce." American cases are not binding authority in England, but, if well reasoned, are considered with respect by the English courts; and it has been said that "many of the American judgments are very valuable as expounding and testing the principles of English decisions."[26] Likewise, in this country, an English decision is an authority insofar only as it appears to be a correct deduction from the general principles of the common law, which was adopted in most of the states of the Union in so far as applicable to their condition and situation, and the law merchant.

Lord Chief Justice Cocburn traced the origin and history of Bills of Exchange, and other negotiable instruments, in his decision in Goodwin v. Robarts.[27] According to his account, and all the authorities agree therewith, bills were first introduced into use by the Florentines, at the ending of the Dark Ages, early in the twelfth century, whence they spread into western Europe,[28] and eventually to England. The first English case in which bills of exchange are mentioned is Martin v. Boure.[29] In England bills of exchange were first limited to dealings between English and foreign merchants. This was during the time when, as we have already noted,[30] a "merchant" was a person dealing in and doing an overseas business, was a shipping merchant; but when the sphere of his operations was enlarged so as to include persons trading with each other within the realm, inland bills of exchange came into existence. The force and effect of bills of exchange, that is, negotiability, was extended to promissory notes,[31] and finally to checks in 1875.[32] As early as 1670 the law of bills of exchange had become pretty well defined and established in England;[33] but was much modified and improved down to the time

(22) Swift v. Tyson, 41 U. S. (16 Pet.) 1, 19, 10 L. ed. 865, 871.

(23) 2 Burr. 882, 887, 97 Eng. Repr. 614, 617.

(24) There will not be one law for Rome, another for Athens, now another, after this another, and among all people, and for all time, there will obtain one and the same law. It may be noted, in this connection, that Cicero was the first citizen of Rome to procure money to be paid to a party in a foreign country without coin leaving the realm, when he directed a debtor of his in the City of Rome to pay the amount of the debt to his son, in Athens, and the debtor wrote to a debtor of his in Athens directing him to pay that amount of money to Cicero's son at Athens, which he did. But this was in no sense a "bill of exchange."—See 1 Bell Com. bk. III, ch. 2, § 4; 1 Daniels on Neg. Inst., 3rd ed., § 3; Story on Bills, § 6; Pothier de Change, n. 6.

(25) McLean v. Clydesdale Banking Co. (H. L., 1883), 9 App. Cas. 95, 105.

(26) Saramanga v. Stamp (1880), 5 C. P. D. (Cockburn, C. J.) at p. 303.

(27) L. R. 10 Exch. 337, 346-358.

(28) See I Daniels on Neg. Inst., 3rd ed., § 3; 2 Kent Com. 74; Story on Bills, § 5; Street's Foundations of Legal Liability, 335; Von Reumont's Lorenzo de Medici, bk. II, ch. 4; Prof. Edward Jenks' "Early History of Negotiable Instruments," 9 Quarterly Law Review 70.

(29) Cro. Jac. 6, 79 Eng. Repr. 6.

(30) See footnote 20.

(31) 3 and 4 Anne, ch. 9, p. 349.

(32) Goodwin v. Robarts L. R., 10 Exch. 76, 337, 356.

(33) See Marius on Bills of Exchange (1670), and Beawes' Lex Mercatoria (1720).

of the present statute, passed in the latter part of the reign of Queen Victoria.

The significance of the Continental origin of bills of exchange, or the law merchant, is the fact that the foundations are to be sought in the Civil Law, which fact explains some of the features of the doctrine found therein, such as the requirement of a consideration in all negotiable instruments.[34] Another matter that should not be lost sight of is the fact that in the Continental Law Merchant the theory of bills of exchanges is quite different from the theory of bills of exchange in England —which latter doctrine we follow in this country. Under the first we have what may be termed the "mercantile theory," and under the latter we have what has been termed the "banking or currency theory." In its origin a bill of exchange was an instrument by means of which a trade-debt, due in one place, was transferred to another, thereby avoiding the necessity of transferring or transmitting the cash from one place to another; and this is the view the mercantile theory still holds. In England and this country, on the other hand, bills of exchange have been developed into a flexible paper currency. Under the one theory a bill represents a trade transaction; under the other it becomes an instrument of credit merely. Under the first view, as noted above, a consideration is essential to the validity of the bill, the nature and value of which must be correctly expressed in the instrument; while under the second the bill need not express that value has been given, the law raising the presumption that such is the case.

Codification of the law merchant has been made in various of the Continental nations, all of whom adhere to the "mercantile theory" of a bill, among which are France with the "Ordinance de 1673," amplified and substantially re-enacted in "Code de Commerce" in 1818;[35] Spanish Code of 1830;[36] Portuguese Code of 1833; German General Exchange Law, 1849, slightly modified in 1869;[37] Belgian Code of 1872;[38] Italian Commercial Code, 1883,[39] and others.[40] Among English-speaking peoples the first codification of the law merchant was by California in 1872,[41] followed by Great Britain in 1882,[42] which latter act has been copied substantially by the Canadian Bills of Exchange Act and made the basis of the Uniform Negotiable Instrument Act in this country.[43] The English Act is a substantial adoption of Chalmer's "Digest of the Law of Bills of Exchange,"[44] the propositions of the Act being taken word for word, in most cases, from the propositions in the Digest. This being the case, and the Uni-

(34) See remarks in Langdell's Summary of Contracts, § 49.

(35) To a great extent embodies and enacts the opinions of Pothier de Change; regarding the authority of which treatise Mr. Chief Justice Best has said that "it is as high as can be had next to the decisions of a court of justice in this country."—Cox v. Troy, 5 B. & Ald. 474, 481. In the absence of English decisions, the English courts have, in some instances, taken the French Code as a guide.—Foster v. Dawber, 6 Exch. 839, 852, 20 L. J. Exch. 385. A translation of the French Code is found in 3 Randolph on Commercial paper, p. 2830.

(36) Translation found in 3 Rand. on Co. Paper, p. 2809.

(37) Most elaborate and carefully-worked out of foreign codes, being not merely a national but an international code. It was adopted by all the German states and the Austrian Empire. A translation is found in 3 Rand. on Com. Paper, p. 2787.

(38) Which adopts and makes applicable to Belgium the French Code.

(39) The code or law existing prior to 1883 was practically that of the French Code; but the Code of 1883 is a marked departure from that code, as regards bills and notes, and has substantially adopted the provisions of the German Code.

(40) All the more important nations of the world have now codified their law merchant, forty or more continental countries following the "mercantile" view of Bills of Exchange. See a collection of the codifications of the more important mercantile countries in Borchardt's Vollstandige Sammlung der geltenden Wechsel und Handels Gesetze aller Lander, 1871.

(41) See Kerr's Cyc. Cal. Civil Code, 1st ed., §§ 3086-3262. This codification was afterwards adopted in North Dakota, Utah and Wyoming.

(42) "Bills of Exchange Act, 1882," 45 and 46 Vict., ch. 61; reprinted in Bayles on Bills, appendix; 3 Rand. on Com. Paper, p. 2737; 4 Eng. Rul. Cas. 132.

(43) See New York Act, printed in 3 Rand. on Com. Paper, p. 2665.

(44) The same as Pothier's de Change is embodied in the French Code.

form Negotiable Instrument Act being, in many if not most cases, taken word for word from the English Act—even the form, divisions and subdivisions being largely retained—it may be helpful to a better understanding of this new form of legislation to outline and explain the method of preparation by Judge Chalmers of his original Digest. Judge Chalmers explains that his Digest was modeled after the plan of the Indian Codes, the main idea and method of procedure being first to lay down the general proposition of the law; then to set out the qualifications, or less obvious deductions, where of sufficient importance, in the form of explanations; then to give the exceptions, if any; and finally to illustrate the abstract proposition, when necessary or expedient, by examples showing the application of the general principle to a given state of facts, each general proposition, with its accompanying explanations and exceptions, forming a separate article of the treatise or Digest. The whole scope of the Digest is not embraced within the English Act, the concrete illustrations of the application of the abstract principles not being included in the text of the statute; but the other subordinations of explanations and exceptions to the general propositions seem to be pretty generally retained throughout the text of the Act, as shown by the various subdivisions and subordinations of the various sections of the Act.

The English Act was drawn by Judge Chalmers, and is declaratory of the common law of England, or rather of the Law Merchant of England as expressed by the authorities on English law. After the Act was drafted it was submitted to the recognized authorities on English commercial law and practice, and finally settled by strong parliamentary committees, of which Lord Herschell and Lord Bramwell were members. The Act, as finally settled and passed, includes some amendments drafted by Mr. Dove Wilson, the eminent Scotch expert on commercial law, by which the laws of both countries were assimilated. Other improvements were suggested for practical convenience by other persons eminent in and conversant with commercial business.[45]

The English Act does not suspend or supersede the law as formerly expounded in the court cases, it being especially provided therein[46]—a provision not incorporated in the Uniform Negotiable Instrument Act—that the rules of the common law and the rules of the law merchant shall still be applicable, except insofar as they are inconsistent with the provisions of the Act; and the English courts, in the interpretation of the Act, may be guided by the previously-existing case-law on the subject.[47]

JAMES M. KERR.

Pasadena, Calif.

(45) 4 Eng. Rul. Cas. 132.
(46) § 97 (2).
(47) Bank of England v. Vagliano (1891), App. Cas. 107, at p. 145, 3 Eng. Rul. Cas. 695.

REMOVAL OF CAUSES—NONFEASANCE BY SERVANT.

PLUNKETT v. GULF REFINING CO. et al.

District Court, N. D. Georgia. June 10, 1919.

259 Fed. 968.

A declaration in a servant's suit against his nonresident corporate employer and a resident overseer for injuries by the falling of the false bottom of a tank, charging that the injuries resulted from the overseer's failure to notify plaintiff of the false bottom, held to state no cause of action against the overseer personally, since such failure was a mere nonfeasance, and his joinder did not prevent removal of cause.

NEWMAN, District Judge. This is a suit brought by the plaintiff against defendants for an injury to the plaintiff caused in this way, according to the declaration:

The plaintiff was employed by the defendant the Gulf Refining Company, and H. L. Plunkett was the superintendent of construction for this company in the construction of a stable and garage in Fulton County, Ga., and as such official was the *alter ego* of the Gulf Refining Company, personally directing the work herein described, and through his negligence caused the injuries to the plaintiff. It seems that the

plaintiff, a carpenter, was by direction engaged in other work, and was assisting in cleaning out a tank containing tar, which was to be used as a roof covering. The tank containing the tar was being cleaned, or attempted to be cleaned, by the plaintiff, under the direction of the defendants. The defendants ordered the plaintiff "to get a piece of timber and prize said tank up, so it could pe tilted on its edge or end, to clean the tar and dirt out of the tank, in order that another drum of tar might be prepared, which plaintiff did after great and strenuous effort, because said tank was too large, hot and heavy to be easily handled by one man." The tank was defective, in that it had a false bottom, of which plaintiff did not know; it being so placed that it did not come within his observation, and he had no knowledge of it, and the defendants failed to give him notice, or to warn him of the danger of the false bottom, but instead ordered him to hurry and clean the tank. "After petitioner had turned said tank partly upon its side, and while using a shovel, under the direct orders of defendants, in cleaning the tar out of said tank, the false bottom or loose patch, a piece of iron about eighteen inches wide and about three feet long, fell from the upper side of the bottom of the tank as it then stood, down into the hot tar, and splashed said boiling tar several feet, causing a large quantity of it to strike petitioner, almost covering him from his breast to his feet, especially scalding, burning and peeling the skin, flesh," etc., describing severe injuries which he received from the hot tar, and great pain caused him thereby.

The suit is a joint one against the Gulf Refining Company and H. L. Plunkett. The negligence complained of, and specifically set out in certain paragraphs of § 10 of the petition, is as follows:

(a) "That the defendants failed and refused to furnish petitioner a safe place to work," etc.; that paragraph applying especially, of course, to the defendant company, whose duty it was to furnish him a safe place to work.

(b) "That defendants rented and caused to be used a defective boiler, tank, or vat, knowing that it was insufficient and defective and dangerous." This, also, of course, refers to the defendant company.

(c) "That defendants ordered petitioner to use a broken and defective boiler and failed to notify him of the danger he was in."

(d) "That defendants were wantonly and willfully negligent in their order to petitioner to hasten and to do work he was doing at the time he was injured, as he was directed, with the boiler in the condition it was in, which condition was known to defendants;" and

(e) "That defendants were negligent in their failure to furnish petitioner good and sufficient help to do the work required of him at the time of said injury."

The defendant Gulf Refining Company is a nonresident corporation and H. L. Plunkett is a citizen and resident of the Northern District of Georgia, where the plaintiff is also a citizen and resident. The defendants have removed the case to this court, and the only reason it is not removable is that the defendant H. L. Plunkett is a citizen and resident of this district, thereby causing the case to lack the requisite diversity of citizenship. * * *

Taking this declaration altogether, the only possible wrong that can be charged to the defendant Plunkett is that, knowing the tar tank to have a false bottom, he failed to give the plaintiff notice thereof. The only thing, according to the declaration, which caused injury to the plaintiff, was the falling of the false bottom into the tar, causing it to splash on the plaintiff, severely burning him. The mere hurrying of the plaintiff to do the work, or failing to furnish him additional help, does not appear, from the declaration, to have had anything to do with causing his injuries. There is nothing alleged to show that additional help, or time, would have prevented this false bottom from falling. What caused his injuries, clearly, from the petition, was a part of the bottom of the tank, or "false bottom," as it is called in the petition, falling into the hot tar, thereby splashing it on him. The most that the defendant Plunkett could be resopnsible for is for not telling the plaintiff of this false bottom and that it was likely to fall, and that is clearly nonfeasance. And it is well settled, I think, by the authorities, that for mere nonfeasance an employe of a corporation will not be liable to a third person for injuries received. * * *

While it is unnecessary for me to decide in this case whether a cause of action is stated against the corporation the Gulf Refining Company, I am compelled to hold that there is no cause of action stated against the defendant Plunkett. An important case, directly in point here, is that of Macutis v. Cudahy Packing Co. et al. (D. C.), 203 Fed. 291, decided by Judge T. C. Munger, in the District Court for Nebraska. The decision by Judge Munger is brief, and is as follows:

"This cause was begun in the state court, and removed to this court, on petition of the defendant Cudahy Company, showing diversity of cit-

izenship between plaintiff and itself. The case is now presented upon a motion to remand. The plaintiff was an employe of the packing company, engaged in work about carcasses of beeves, and was injured by the fall of a carcass upon him. He alleges that it was the duty of the packing company foreman, who is the other defendant, to repair and maintain in safe condition the appliances from which the carcass was suspended, and that it was the duty of the defendants to furnish and maintain safe appliances, and that defendants negligently allowed the appliances to be worn, defective and unsafe and, as a result of such condition, his injuries occurred. In this there is no allegation of facts showing a neglected duty of the foreman to the plaintiff. At most, the allegation charges no more than nonfeasance—mere omission on the part of the foreman to perform the master's duty as to inspection and repairs. For this the foreman is not liable to the plaintiff. Mechem on Agency, §§ 569, 572, 573; Kelly v Chicago & A. Ry. Co. et al. (C. C.), 122 Fed. 286-289; Floyt v. Shenango Furnace Co. et al. (C. C.), 186 Fed. 539, 540; Clark v. Chicago, R. I. & P. Ry. Co. et al. (D. C.), 194 Fed. 505-514. The consensus of judicial opinion is such that this cannot be said to be a fairly debatable question, as is the joint liability of master and servant for the servant's misfeasance. As the plaintiff's petition discloses no cause of action against the defendant employe, nor any reasonable basis for joining him as a party defendant, it must be held that the controversy is wholly between the plaintiff and the removing defendant. Wecker v. National Enameling & Stamping Co., 204 U. S. 176-185, 27 Sup. Ct. 184, 51 L. Ed. 430, 9 Ann. Cas. 757.

"The motion to remand will be overruled."

A decision by Judge Cochran, District Judge for the Eastern District of Kentucky, in McAllister v. Chesapeake & Ohio Railway Co. et al., 198 Fed. 660, gives a very elaborate discussion of the question involved here. Different facts were in volved in that case, but decisions where suits for torts were brought against nonresident employers and an employe or employes, who were residents of the district, joined as defendants, are cited and discussed. This opinion goes thoroughly into the whole matter, and Judge Cochran holds the case then before the court to be removable, and declined to remand it, and I think the effect of his ruling is against the right of the plaintiff in this case to remand.

The Supreme Court of Georgia, in Southern Railway Co. v. Grizzle, 124 Ga. 735, 53 S. E. 244, 110 Am St. Rep. 191, by Judge Cobb, in his opinion, said:

"An agent is not ordinarily liable to third persons for mere nonfeasance"—citing Kimbrough v. Boswell, 119 Ga. 201, 45 S. E. 977.

In that case there was a suit against the railroad company and one O'Neal, who was the engineer in charge of the train which killed the husband of the plaintiff. It was held in that case, by the Supreme Court, that the case was not removable, and the action of the state court in decling to remove it was affirmed, but the facts were so different from this case that I do not think the reasoning of the court as to the liability of the resident defendant is applicable here. The whole of this matter resolves itself into this: In a case like this, where a resident employe is joined with a nonresident employer as a defendant in a suit far damages, and no cause of action is stated against the resident defendant, it will be treated by the court as a case only against the employer, the nonresident of the state, for the purpose of jurisdiction. Where nonfeasance only is charged against the resident employe, no case is stated against him, because an employe is not liable to a third party, as I have stated, for mere nonfeasance in connection with some duty he owes to his employer.

In this case I am unable to escape the conclusion that, applying that rule here, no case is made against the defendant Plunkett, and it stands as a case between the plaintiff Plunkett and the nonresident corporation, which is sufficient to remove it to this court, the other requisites existing.

The order to remand must be denied.

NOTE—*Nonfeasance by Servant in Removability Causes.*—It is to be noticed that the case of Southern Ry. Co. v. Grizzle, 124 Ga. 735, 53 S. E. 244, 110 Am. St. Rep. 191, is quite a lame holding and what is quoted is all that is said in the case it cites. The rule itself, however, was declared by Story on Agency, § 308, and rests on the principle of there being no privity between the servant or agent and third person, but privity exists only between the master and such person. From this privity arises the maxim *respondeat superior*. Mayer v. Thompson-Hutchison Building Co., 104 Ala. 611, 16 So. 620, 28 L. R. A. 438, 53 Am. St. Rep. 88. But this rule has not been very generally followed, that case not itself following it.

In Murray v. Cowherd, 148 Ky. 591, 147 S. W. 6, 40 L. R. A. (N. S.) 617, and in Evans Chemical Works v. Ball, 159 Ky. 399, 167 S. W. 390, it was held that the vice principal stood as completely for the principal as he could stand for himself and, indeed, it is to be thought that if he did not it would be difficult to get at a corporation at all for the acts and omissions of its servants.

In Schlosser v. Great N. R. Co., 20 N. D. 406, 127 N. W. 502, it is said everyone, whether he is principal or agent, is responsible for his own negligence, personal liability not being predicated on agency, but on the ground that he is a wrongdoer.

In Corliss v. Keown, 207 Mass. 149, 93 N. E. 143, it is said one cannot avoid liability by showing he was assisting a negligent owner as his servant.

In Gennaux v. N. W. Improv. Co., 72 Wash. 268, 130 Pac. 495, a mine foreman was held liable to a miner for injuries from the fall of part of a mine roof where he knew its dangerous condition and took no steps to warn the miner.

But we ascertain that in many states no rule of nonfeasance, in the strict sense thereof, is recognized, and when a state court would support a joint action against master and servant or against corporation and employe, the case ought to be irremovable for diversity of citizenship to a federal court there sitting. And the court ought rather to look for state cases than federal ones to determine removability *vel non*. It is to be said that the question of nonfeasance is scarcely touched on in any of the federal cases that the opinion in the instant case cites. C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 181.

Husband and Wife; Marriage; Breach of Promise to Marry; Relation to Court; Relation to Client; Relation to Third Person—Entry of judgment by default upon notes given to settle suit for breach of promise to marry, notwithstanding lawyer for promisee knows of her prior marriage and is unable to confirm information of death of husband; Course indicated.—A lawyer has in behalf of a woman client, and with her consent, settled a suit instituted by him in good faith for breach of promise of marriage, by taking notes of the defendant, with a stipulation for entry of judgment in the action in case of default in payment. After paying some of the notes the defendant deliberately defaults, assigning as a reason that at the time of the alleged promise and the suit the plaintiff was a married woman. The lawyer investigates and learns that she was married about four years ago, and that her husband deserted her and disappeared a few months thereafter (all of which was known to the defendant at the time he made the settlement), and that his client is advised by relatives of her husband that he is dead; but the lawyer can get no confirmation of this information, nor any information of the husband's whereabouts.

In the opinion of the Committee is there any impropriety in the lawyer entering judgment pursuant to the stipulation for the unpaid balance of the amount of the settlement?

ANSWER No. 181.

In the opinion of the Committee, if the plaintiff's attorney believes that his client has acted in bad faith, he should withdraw from the cause, because he may otherwise be assisting in the perpetration of a fraud. If he does not so believe, there is still a possibility that the husband was alive at the time of the contract to marry, and that the stipulation was, therefore, the result of a mutual mistake as to a material fact. For this reason, it is the opinion of the Committee that the attorney should not enter judgment on the stipulation without opportunity to the defendant to assert such ground as he may be advised why he should be relieved from the stipulation.

QUESTION No. 182.

Partnership; Relation of Other Attorneys; Foreign Attorneys; Attorneys of Other States—Law partnerships with attorneys of other states; Conditions indicated.—Is there any impropriety on the part of a member of the New York Bar allying or associating himself with a member of the New Jersey Bar and employing the names of both attorneys as a firm-name in New York, the object and terms of such association being that the New Jersey attorney shall attend to the New Jersey law business of the firm and that the New York attorney shall attend to the New York law business of the firm, and the said earnings are to be divided in accordance with the rules and regulations presently prevailing between forwarding attorneys, to wit: One-third of said earnings to forwarding attorney.

ANSWER TO No. 182.

The inquiry may involve questions of statutory construction, upon which the Committee expresses no opinion. (*See New York Penal Law, Sections 270, 274.*)

Without passing upon any question of law, the Committee is of the opinion that the use in New York, of a firm name which includes the name of a lawyer not admitted to practice there, is objectionable because it may lead to the false inference that a lawyer of a foreign state is a member of the New York Bar. But

if there is no statutory prohibition, it is the opinion of a majority of the Committee that any association of the limited character indicated in the question in which it clearly appears that the New Jersey lawyer is not a member of the New York Bar, or a partnership of the limited character indicated in the question not using such a firm name is not *per se* professionally improper. Provided, howver, that such association or partnership is not used as a cloak to enable one not admitted to practice in the courts of one of the states to practice before the courts thereof.

BOOKS RECEIVED.

American Digest, Annotated. Key Number Series, Vol. 6A. Continuing the Century Digest and the First and Second Decennial Digests. A Digest of all Current Decisions of all the American Courts, as Reported in the National Reporter System, the Official Reports, and Elsewhere, from August 1, 1918, to December 31, 1918, and Digested in the Monthly Advance Sheets for September, 1918, to and Including January, 1919 (Nos. 336-340). Prepared and Edited by the Editorial Staff of the American Digest System. St. Paul. West Publishing Co. 1919. Review will follow.

Cases on the Law of Property. Volume 2. Introduction to the Law of Real Property. Rights in Land. By Harry A. Bigelow, Professor of Law in the University of Chicago. American Casebook Series. William R. Vance, General Editor. St. Paul, West Publishing Company. 1919. Price, $5.00. Review will follow.

Cases on the Law of Property. Volume 1. Personal Property. By Harry A. Bigelow, Professor of Law in the University of Chicago. American Case Book Series. William R. Vance, General Editor. St. Paul. West Publishing Co. 1917. Price, $3.50. Review will follow.

Cases on the Law of Property. Volume 4. Future Interests and Illegal Conditions and Restraints. By Albert M. Kales, of the Chicago Bar. American Case Book Series. William R. Vance, General Editor. St. Paul. West Publishing Co. 1918. Price, $4.50. Review will follow.

HUMOR OF THE LAW.

"Did anybody comment on the way you handle your new car?"

"One man made a brief remark: "Fifty dollars and costs."

"Too many aspersions are cast on the legal profession."

"How's that?"

"Well, for one thing, lawyers are accused of taking liberties with the truth."

"Umph! Have you never heard a lawyer refer at the end of every other sentence to the 'intelligent gentlemen of the jury'?"—Birmingham Age-Herald.

Gen. Clarence R. Edwards said in a Boston address:

"Our opponents showed too domineering a spirit. They were like the man at the public meeting who yelled at the speaker:

"Say, I could lick you with one hand tied behind me!"

"'Order!' said the speaker sternly. 'You're out of order, friend.'

"'I know I'm out of order,' yelled the man, or I could lick you with both hands tied behind me.'"

Hon. "Bob" Miller, Mississippi's most famous criminal lawyer, was attending a convention in New Orleans where he engaged in an argument with Dr. C. A. M. Dorrestein over the relative merits of their profession.

"I don't say that all lawyers are crooks," said the physician, "but you'll have to admit that men of your cloth don't make angels."

"You are right," retorted "Col. Bob." "You doctors have the best of us in that respect."

There was much mourning recently in Chicago, when 30 barrels of beer were destroyed by order of Federal Judge Landis. The Chicago Evening Post painted the picture thuswise:

"At the breakwater at the foot of Grand avenue, the barrels were unloaded. Newspaper men took notes, photographers snapped, the executioner raised his ax, everybody raised his hat, and the ax descended while the assembled chorus sang:

"If fifty men with fifty steins could guzzle half a year,
Could they, do you suppose, succeed in finishing this beer?
'I doubt it,' said Judge Landis, as he shed a bitter tear."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Assignments**—Conditional Sale.—The conditional seller of a sawmill outfit, who has consented to the assignment by the buyer by accepting part of the purchase money from the assignee, and by cashing one of the checks after judgment in favor of the assignee in the seller's suit to recover the outfit has been rendered, is not in a position to say the contract was not legally assigned by the buyer.—Guy v. Bullard, N. C., 100 S. E. 328.

2. **Bankruptcy**—Dividends.—A creditor of a bankrupt corporation holding its notes secured by its mortgage bonds as collateral, after realizing from the mortgaged property, cannot prove against the general estate both the balance due on the notes and the balance due on the bonds, but is entitled to dividends only on the amount of the actual indebtedness to him.—In re Battle Island Paper Co., U. S. D. C., 259 Fed. 921.

3.——Notice.—A debtor, who within four months before bankruptcy proceedings against him and when insolvent transferred practically all his property of value as security to two creditors, held chargeable with knowledge of his insolvency and with an intent to prefer such creditors, which rendered the transfers acts of bankruptcy.—In re Jones, U. S. D. C., 259 Fed. 927.

4.——Plenary Suit.—A trustee is not required to resort to a plenary suit to establish his right to property which has come into his possession, but may defend it when challenged in the bankruptcy proceedings.—In re Clayton, U. S. D. C., 259 Fed. 911.

5.——Preference.—A bank balance appearing to the credit of a bankrupt, by reason of the crediting of certain checks then held by and belonging to the bank under a prior agreement for their application on a note of bankrupt, and which were afterward so applied and charged back, held not recoverable by the trustee, in the absence of evidence making the transaction one of voidable preference.—In re Looschen Piano Case Co., U. S. D. C., 259 Fed. 931.

6.——Provable Claim.—Though bankrupt obtained defendant's money by fraud, yet defendant had a claim against him provable in bankruptcy proceedings, and was a creditor.—Watchmaker v. Barnes, U. S. C. C. A., 259 Fed. 783.

7.——Referee.—Under General Order in Bankruptcy No. 17, it is the duty of a referee, where petition to review his order is filed, to forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.—Gardner v. Gleason, U. S. C. C. A., 259 Fed. 755.

8. **Bastards**—Legitimation. — Legitimation of a bastard must be according to the law of the state in which she and her father had lived during their joint lives, to entitle her to take as his heir personal property which he left in another state.—In re Forney's Estate, Nev., 184 Pac. 206.

9. **Bills and Notes**—Installments.—The mere fact of paying one of a series or installments conditioned upon the performance of an act by the payee does not constitute a waiver, either of the right to have the act performed, or the correlative right to refuse to make further payments until it is performed.—Spotton v. Dyer, Cal., 184 Pac. 23.

10. **Carriers of Live Stock**—Act of God.—A carrier of live stock can exempt itself from liabilities for injuries in transit only by showing the death or injury of the stock was brought about by an act of God, the public enemy, or by the inherent nature, propensities, or viciousness of the animals, or the act or fault of the shipper.—Louisville & N. R. Co. v. Hunter, Ky., 214 S. W. 914.

11. **Carriers of Passengers** — Alighting. — Where street car, having stopped to permit passenger to alight, suddenly started forward without notice to passenger, while passenger was alighting from the car, street railroad is liable for injuries to passenger.—Kentucky Traction & Terminal Co. v. Peel, Ky., 214 S. W. 874.

12. **Charities**—Wills. — Will giving trustees or their successors the absolute discretion to determine to what causes and activities of a church the funds bequeathed to it should be devoted, etc., held to have created in the trustees a power to sell realty; "funds" not having been used in the sense of personal estate, but to include all property of every kind devised.—Kratz v. Slaughter's Ex'rs, Ky., 214 S. W. 878.

13. **Commerce** — Instrumentalities. — The roundhouse and tracks adjacent thereto and the turntable maintained at a division point by an interstate railroad carrier for the storing of engines, washing of boilers, etc., are instrumentalities used in interstate commerce.—Lusk v. Bandy, Okla., 184 Pac. 144.

14.——Motor Vehicle.—Defendant, who operated a motor vehicle daily from a hotel in Albany, N. Y., to a hotel in Pittsfield, Mass., and

return, carrying passengers for hire, accepted only for the entire trip, was engaged exclusively in interstate commerce. — Commonwealth v. O'Neil, Mass., 124 N. E. 482.

15. **Contracts**—Bad Faith.—The common law rule has been modified in Iowa, so that there may be recovery under a written contract on proof of substantial performance, where the omissions and deviations are inadvertent or unintentional, and are not due to bad faith; hence, instructions allowing recovery on proof of substantial performance of a contract for the construction of the monument, the specifications of which were in writing, was proper.—Stratmeyer v. Hoyt, Iowa, 174 N. W. 243.

16.——Consideration.—An agreement adding to the terms of an existing agreement between the same parties, and by which new and onerous terms are imposed upon one of the parties, without any compensating advantage, requires consideration to support it.—Anderson v. Adler, Cal., 184 Pac. 42.

17.——Construction.—A contract should be construed with respect to the situation in which the parties were at the time it was made.—Burrows v. Petroleum Development Co., Cal., 184 Pac. 5.

18.——Escrow.—Failure to complete a railroad within contract time will not defeat recovery of money deposited in escrow as a consideration for construction of road, where express provisions of contract do not show time to be of the essence, and where in other respects there has been a compliance with its terms.—Drumright v. Brown, Okla., 184 Pac. 110.

19.——Unlawful Object.—There can be no recovery on a contract for services made with an illegal design in view, or for the purpose of enabling the beneficiary to accomplish an unlawful object.—Edenton Cotton Mills v. Norfolk Southern R. Co., N. C., 100 S. E. 341.

20. **Corporations**—Conversion. — The refusal of a corporation to issue stock certificates to one entitled thereto may or may not constitute conversion, depending upon the character of the excuse the corporation has for not issuing the stock.—Baglin v. Earl-Eagle Mining Co., Utah, 184 Pac. 190.

21.——Minority Stockholders.—Where president of a corporation sells its property, in violation of its by-laws or of a resolution of board of directors, for an inadequate consideration, it will be set aside in an action by dissenting stockholders, where board of directors refuses to bring suit.—Bentley v. Zelma Oil Co., Okla., 184 Pac. 131.

22.——Purchase of Own Stock.—A corporation may not purchase its own capital stock, except from its surplus earnings or accumulated profits and, if it does so, the purchase is void as against creditors.—In re O'Gara & Maguire, U. S. D. C., 259 Fed. 935.

23.——Ratification.—The violation of their duty by corporate directors cannot be ratified by the action of those who were guilty of participation in the wrongful acts, even though they constituted a majority of the directors of of the stockholders.—Farwell v. Pyle-National Electric Head Light Co., Ill., 124 N. E. 449.

24.——Ultra Vires.—A contract by defendant corporation to lend money to complainant, which defendant was without charter power to make, is void, and neither party can enforce it or predicate upon it any right of recovery.—National Trust & Credit Co. v. F. H. Orcutt & Son Co., U. S. C. C. A., 259 Fed. 830.

25. **Courts**—Concurrent Jurisdiction.—Equity has concurrent jurisdiction with the court of ordinary for the purpose of distributing estates when a proper case is made.—McKinney v. Powell, Ga., 100 S. E. 375.

26. **Criminal Law**—Forgery. — In forgery trial, it was not error to exclude accused's account books, offered by him to show his disbursements for the benefit of his defrauded employer, for the entries, being made by accused, were self-serving declarations.—People v. Meyer, Ill., 124 N. E. 447.

27.——Instructions.—A bad instruction is not cured by a good one, properly stating law of the case, given at the instance of same or another party to action.—State v. Ringer, W. Va., 100 S. E. 413.

28.——Receiving Stolen Goods.—In a prosecution for receiving stolen goods, evidence as to defendant's possession of a watch stolen at another time was competent evidence on the question of guilty knowledge.—State v. Mincher, N. C., 100 S. E. 339.

29. **Customs and Usages**—Stipulation. — A general custom known to both contracting parties respecting the subject-matter of their stipulation is in a certain sense a law covering them, so that it is not necessary to mention it in writing.—Hurst v. Larson, Ore., 184 Pac. 258.

30. **Damages**—Penalty.—In a contract by which respondent agreed to receive and pay for at least 1,200 salmon from each libelant every 24 hours, a provision that, in case of detention of a boat from delivering for six hours after arrival, the boat should be credited with 25 per cent additional salmon, and given an equal credit for each hour's further delay, held a stipulation for a penalty and not for liquidated damages.—Alioto v. Pedersen, U. S. C. C. A., 259 Fed. 856.

31.——Special Damages.—"Special damages," which are those which are the natural, but not the necessary, consequences of the act complained of, must be pleaded before evidence thereof can be received or a recovery had.—Kirk v. Madareita, Idaho, 184 Pac. 225.

32. **Deaths**—Damages. — The measure of compensatory damages, in action for death of plaintiff's intestate, is the destroyed capacity to earn money.—Kentucky & I. T. R. Co. v. Becker's Adm'r, Ky., 214 S. W. 900.

33. **Dedication**—Express and Implied.—The law recognizes two classes of dedications of a street to a city—express dedication and implied dedication.—Morlang v. City of Parkersburg, W. Va., 100 S. E. 394.

34. **Deeds**—Setting Aside.—To justify setting aside of father's deeds to children, executed shortly before his death, at a time when he was sick, it must be made to appear, not only that father was sick, but that this sickness produced mental disturbances to the extent that, at the time deeds were made, he was incapable of understanding and appreciating the extent of his property, the objects of his bounty, and the disposition which he desired to make of his estate.—Gilmore v. Griffith, Iowa, 174 N. W. 273.

35. **Disorderly House**—Lewdness.—In view of Code, § 4939, denouncing the keeping of house of ill fame, the word "lewdness," as used in § 4943, declaring that any person, who, for the purpose of prostitution and lewdness, resorts to any house of ill fame shall be punished, means lustful and lascivious conduct, and is synonymous with "sensuality" and "debauchery;" the section being intended to punish anyone who may resort to any house of ill fame for the purpose of there indulging in sensuality.—State v. Sullivan, Iowa, 174 N. W. 225.

36. **Divorce**—Custody of Children.—It is the cardinal principle in awarding custody of children of divorced persons that the interest and welfare of the children are paramount to the rights and privileges of the parents.—McKissick v. McKissick, Ore., 184 Pac. 272.

37. **Easements**—Private Ways.—Private ways of necessity existed by the common law, and were said to be founded on a presumption of grant or reservation.—Wiese v. Thien, Mo., 214 S. W. 853.

38. **Equity**—Maxims.—Where all of the parties interested in the proceeds resulting from the condemnation by the United States of land, title to which stood in the name of one who before end of the proceedings became a bankrupt, agreed that on payment of the value as fixed by the jury, the court should decide the equities, held that, as the proceeding had to be treated as an equitable one, or the parties would be out of court, the maxim, "He who seeks equity must do equity," is applicable to all.—Turner v. Woodard, U. S. C. C. A., 259 Fed. 737.

39.——Mistake. — Mistake is a recognized ground for the exercise of the equitable jurisdiction of courts, and the correction of mistakes by doing away with their consequences is a recognized remedy to be applied.—United States Fidelity & Guaranty Co. v. Heller, U. S. D. C., 259 Fed. 885.

40. **Executors and Administrators**—Services to Decedent.—In action for services as intestate's housekeeper, plaintiff must show that the services were rendered in pursuance of a mutual understanding that she was to receive payment or that circumstances justified the expectation that she was to be paid.—Gordon v. Keene, Me., 107 Atl. 849.

41. **False Pretenses**—Fraudulent Representation.—The elements of the crime of obtaining money by false pretenses consist of a fraudulent representation, defendant's knowledge of the falsity, the making of the representation with intent to deceive the innocent party, and the innocent party's reliance thereon.—People v. Neetens, Cal., 184 Pac. 27.

42. **Fish**—Right of Navigation.—The paramountcy of the right of navigation does not extinguish the common right of fishery, although the former does, whenever there is a necessary conflict, limit the latter and compel it to yield, so far as the right of fishery interferes with the fair, useful and legitimate exercise of navigation rights, but the navigator must use ordinary care and due regard to property rights of fishermen.—Anderson v. Columbia Contract Co., Ore., 184 Pac. 240.

43. **Fraud**—Evidence.—If contract is conditioned on seller's performance of certain things within specified time, within which performance is being considered by parties, representations then made by seller, intended to prevent suspicion of prior fraud inducing contract and to induce buyer to consummate contract, are competent as evidence of fraud in buyer's action for damages.—Lindburg v. Lamb, Neb., 174 N. W. 303.

44. **Fraudulent Conveyances**—Equity.—It is an equitable principle that when a conveyance of property has been avoided by creditors of the grantor, it may be upheld in favor of a grantee free from actual fraud to the extent of the actual consideration paid.—La Salle Opera House Co. v. La Salle Amusement Co., Ill., 124 N. W. 454.

45.——Gift to Wife.—A gift by husband to wife, of deeds and a mortgage, which gift transferred substantially all his property to her, is not effective against the husband's pre-existing creditor, unless it be shown by a preponderance of the evidence that at the time of the gift the donor had other property amply sufficient to pay all his creditors; and the burden of proof is upon the defendants, donor and donee, and the creditor's failure to prove donor's insolvency does not discharge such burden.—Kolb v. Mall, Iowa, 174 N. W. 226.

46.——Notice to Grantee.—A buyer's mere knowledge that his seller was in debt was insufficient to charge him with notice of an intended fraud on the seller's creditors in the conveyance to him.—Swanson Automobile Co. v. Stone, Iowa, 174 N. W. 247.

47. **Gaming**—Common Law.—At common law gaming or gambling was not itself unlawful, and is not now a crime unless so made by statute.—Ex parte Pierotti, Nev., 184 Pac. 209.

48. **Husband and Wife**—Community Property.—The presumption is that land deeded to a married man was community property.—Hughes v. Robinson, Tex., 214 S. W. 946.

49.——Deeds.—Where a deed was to a trustee for a woman and to her husband, held that in view of the situation of the parties and the amounts paid by the married woman, the husband took an undivided one-half interest in the premises.—Wilson v. Wilson, Ky., 214 S. W. 911.

50. **Injunction**—Picketing.—In action to restrain picketing by strikers, where court has jurisdiction of parties and cause of action, and rendered a decree restraining defendants from acts enumerated, defendants cannot resist contempt proceedings for violation of injunction on ground that petition is insufficient, or that decree is too broad, in that it enjoins legal picketing.—Lyon & Healy v. Piano, Organ & Musical Instrument Workers' International Union, Ill., 124 N. E. 443.

51. **Insurance**—Assignment.—An assignee of a life policy stands in the shoes of his assignor, and after forfeiture is entitled to no greater rights than the assignor.—Exchange Bank of Bloomfield v. Illinois Life Ins. Co., Iowa, 174 N. W. 260.

52.——Vacancy.—A vacancy clause in a fire insurance policy could be waived by the words or conduct of the insurer's agent, authorized to solicit insurance, take application, deliver the policy, and collect premiums, though not authorized to issue the policy.—North River Ins. Co. v. Rawls, Ky., 214 S. W. 925.

53. **Landlord and Tenant**—Breach of Condition.—Where landlord, by lease providing that for breach of condition he might re-enter and at his option terminate the lease for the lessee's failure to pay, brought action for the rent, the trial court improperly declared forfeiture of the lease, which also provided that all the remedies given the lessor were cumulative.—Burke v. Norton, Cal., 184 Pac. 45.

54.——Re-entry.—A covenant in a lease not to sublet the premises, not enlarged in terms by anything in the context or otherwise, accompanied by a forfeiture and re-entry clause, is not broken by an assignment of the lease.—Goldman v. Daniel Feder & Co., W. Va., 100 S. E. 400.

55.——Tenancy at Will.—Though tenant at will by written agreement between him and purchaser of property terminated tenancy at will and became purchaser's tenant for a term certain, he was not precluded from acquiring title from the original owner.—Hambey v. Wood, Cal., 184 Pac. 9.

56. **Libel and Slander**—Repetition.—One who publishes a libel is responsible for such repetitions of the libel, and such publicity as are fairly within the contemplation of the original publication and are the natural consequence of it.—Elms v. Crane, Me., 107 Atl. 852.

57. **Life Estates**—Death of Tenant.—On death of life tenant, who had previously leased the premises, that part of the lease yet to run is void.—Sanders v. Sutlive Bros. & Co., Iowa, 174 N. W. 267.

58. **Master and Servant**—Automobile.—Where defendant owned an automobile and consented to his minor daughter's operation of the vehicle, and she negligently ran down plaintiff, defendant was liable.—Landry v. Oversen, Iowa, 174 N. W. 255.

59.——Course of Employment.—A master is liable for injuries to another through negligent or wanton and reckless conduct of servant in course of his employment in carrying out master's direction or business, but not for injuries when the servant, disregarding his employment, executes a design of his own.—Douglas v. Holyoke Mach. Co., Mass., 124 N. E. 478.

60.——Employment.—One who, by himself or conspiring with others, induces another to break his contract of employment with a third person to that person's injury, is liable in damages for injury sustained, whether injury done was for benefit of wrongdoer or not.—Carter v. United States Coal & Coke Co., W. Va., 100 S. E. 405.

61.——Non-Delegable Duty.—It is an inalienable and nonassignable duty of the master not to expose the servant to unnecessary risk of injury from dangerous appliances.—Sutherland

v. Buckeye Cotton Oil Co., U. S. D. C., 259 Fed. 909.

62. **Mortgages**—Cancellation. — Equity will cancel a release or satisfaction of mortgage given to become operative and to be recorded upon conditions to be fulfilled.—Zewadski v. Dyal, Fla., 82 So. 846.

63.——Mistake.—When the owner of two mortgages, intending to satisfy one, by mistake satisfies the other mortgage, he is entitled to have the mistake corrected and the mortgage reinstated, unless rights of third parties would be prejudiced.—Dennison v. Jossi, Ore., 184 Pac. 269.

64.——Purchase Money.—Generally, mortgage executed by purchaser contemporaneously with acquirement of legal title, or afterwards as part of same transaction, is a "purchase-money mortgage," regardless of whether executed to vendor or third person, and entitled to preference as such over all other claims or liens arising through the mortgagor though prior in point of time.—Ladd & Tilton Bank v. Mitchell, Ore., 184 Pac. 282.

65.——Tender.—After maturity of a mortgage a tender does not, in North Carolina, which follows the common law doctrine, discharge the lien of the mortgage.—Debnam v. Watkins, N. C., 100 S. E. 336.

66. **Negligence**—Contributory Negligence. — Any negligence on the part of plaintiff contributing directly to the injury will bar an action. —Bejach v. Colby, Tenn., 214 S. W. 869.

67. **Partnership**—Express Agreement. — Unless it satisfactorily appears from all the facts and circumstances in the case that it was the intention of the partners that the moneys advanced by a partner should bear interest, which would thus create an implied agreement, interest should not be allowed in the absence of an express agreement therefor among the partners. —Munroe, Boyce & Co. v. Ward, Mich., 174 N. W. 285.

68. **Principal and Agent**—Estoppel. — That money borrowed by a building contractor was used in carrying out his contract and thus went into the owner's property, does not estop him to repudiate an unauthorized promise of his agent to see that the loan was paid, of which he had no knowledge.—Owens Bottle-Mach. Co. v. Kanawha Banking & Trust Co., U. S. C. C. A., 259 Fed. 838.

69. **Quieting Title**—Common Source.—Where both parties to an action to quiet title claimed from a common source, there was no necessity in that case for the court to determine the right to the common source of title.—Missouri State Life Ins. Co. v. Russ, Mo., 214 S. W. 860.

70.——Jurisdiction.—Equity had jurisdiction of a suit to quiet title, brought by a party in possession of the land in dispute, since he could not prosecute an action in ejectment, and in the suit he had a right to have title adjudicated.—Krueger v. Brooks, Ore., 184 Pac. 285.

71.——Res Judicata.—A purchaser at an administrator's or guardian's sale cannot maintain an action to quiet title, and thereby attempt to indirectly defeat the right of appeal of minors, especially where the effect is to subject same parties to repeated litigations over same subject-matter.—Baldridge v. Smith, Okla., 184 Pac. 153.

72. **Reformation of Instruments**—Denial of. —An instrument will not be reformed where it would be futile to do so.—Chapman v. Williams, S. C., 100 S. E. 360.

73. **Sales**—Contract.—Where a sales contract ran for a term of two years, and from term to term thereafter, until terminated by three months' notice in writing given within 30 days after expiration of any contract period, the duration of the contract is automatically extended for another two-year term upon failure to give the required notice.—Standard Fashion Co. v. Magrane Houston Co., U. S. C. C. A., 259 Fed. 793.

74.——Delay.—Where a person kept and used personal property for about two and a half years, his offer then to return it because it was not as represented was too late, and the delay in offering to return was unreasonable as matter of law.—Western Silo Co. v. Cousins, Okla., 184 Pac. 92.

75.——Retention of Title.—Where city's contract provides for retention of title in contractor until contract price for light and water plant is fully paid, and for delivery of plant, after its completion, to city, as lessee, and for a rental of $1 a year until deferred payments are made, which shall vest title immediately in city, the contract is one of "conditional sale," as distinguished from a mere lease.—J. B. McCrary Co. v. City of Glennville, Ga., 100 S. E. 362.

76.——Vendor's Lien.—A vendor's lien for purchase money does not attach to personalty.—Befarrah v. Spell, N. C., 100 S. E. 321.

77. **Specific Performance**—Joinder.—Contract of a married man to sell real estate, though not joined in by his wife, may be specifically enforced against him.—Kaufman v. Hastings, Ore., 184 Pac. 265.

78. **Street Railroads** — Contributory Negligence.—A person is not guilty of contributory negligence merely because he attempts to cross a street railway track, where cars may legally run at 20 miles an hour, when a car is approaching.—Commonwealth Bonding & Casualty Ins. Co. v. Pacific Electric Ry. Co., Cal., 184 Pac. 29.

79. **Trade-Marks and Trade-Names**—Unfair Competition.—The managing officer of a corporation, who used the corporation as a cloak for unfair competition and to escape personal liability, and received profits from such unfair methods, is, where the corporation is a mere shell, and incapable of responding in damages, liable for the unfair competition, and bound to account for profits made.—Prest-O-Lite Co. v. Acetylene Welding Co., U. S. D. C., 259 Fed. 940.

80. **Trespass**—Cutting Timber.—The owner of land had no cause of action in damages for the cutting of timber under color of title by defendant, a possessor in bad faith, where he, the owner, was not in possession himself at the time of the cutting or any other time.—Ducros v. St. Bernard Cypress Co., La., 82 So. 841.

81. **Trusts**—Merger.—Where the trustee is made the beneficiary of the same estate, both in respect to its quality and quantity, the inevitable result is that the equitable is merged into the legal estate, so that the latter alone remains.—In re Fox's Estate, Pa., 107 Atl. 863.

82.——Termination.—An agreement between a beneficiary of a trust and the trustee as to termination of trust at beneficiary's death did not affect the rights of others, not parties to the agreement, who have not assented otherwise to its terms.—Conant v. St. John, Mass., 124 N. E. 486.

83. **Vendor and Purchaser**—Unrecorded Deed. —Open, exclusive and visible possession of land, either through himself or his agent and employes, maintained by the holder of an unrecorded deed when the lien of the grantor's judgment creditor attaches by filing and indexing of an abstract of judgment against the grantor, is notice to the judgment creditor of the right under which the land is held.—Newman v. Phelan, Tex., 214 S. W. 958.

84. **Wills**—Construction.—In the construction of a will the court aims to ascertain and carry out testator's intention as expressed therein, if possible.—Manes v. Rose, Iowa, 174 N. W. 235.

85.——Foreign Wills.—A foreign will can be used in the courts of Texas as evidence of the ownership of property before recorded in the county court or probated in Texas according to Texas law, except as to real property situated in Texas.—Hare v. Pendleton, Tex., 214 S. W. 948.

86.——Intestacy.—Intestacy will be avoided, if avoidance is in reason possible.—Wilmes v. Tiernay, Iowa, 174 N. W. 271.

87.——Testacy Presumed.—It will be presumed that testator intended to dispose of all of his property by his will, dying intestate as to none of it; a rule to be applied when the language is so uncertain as to be susceptible of two constructions, one resulting in testacy and the other in intestacy.—Shields v. Shields, Ky., 214 S. W. 907.